

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ANNE MARIE HUNTER,)
)
Plaintiff,)
)
v.) CASE NO. 2:06-cv-0411-SRW
)
DURR SYSTEMS, INC.,)
)
Defendant.)

**EVIDENTIARY SUBMISSION IN SUPPORT OF
DEFENDANT DURR SYSTEMS, INC.'S
MOTION FOR FINAL SUMMARY JUDGMENT**

Defendant Durr Systems, Inc., by and through its undersigned counsel, and pursuant to this Court's Civil Administrative Procedures, files the following in support of its Motion for Final Summary Judgment:

Exhibit A: Deposition testimony excerpts of Anne Marie Hunter

Exhibit B: Affidavit of Scott Matthew Wagner

Respectfully submitted,

s/James B. Carlson
James B. Carlson
Christopher A. Bottcher
SIROTE & PERMUTT, P.C.
2311 Highland Avenue South
Post Office Box 55727
Birmingham, AL 35255-5727
Tel.: (205) 930-5100
Fax: (205) 930-5335
E-mail: jcarlson@sirote.com
E-mail: cbottcher@sirote.com
Attorneys for Defendant
Durr Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas E. Hankins
Hankins & Conklin, P.C.
6812 North Oak Trafficway, Suite 5
Gladstone, MO 64118
Telephone: 816-436-3100
Facsimile: 816-436-8643
E-mail:tomhankinslaw@cs.com
Attorney for Plaintiff, Anne Marie Hunter

s/James B. Carlson
Of Counsel

EXHIBIT “A”

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 AT MONTGOMERY
4

5 ANNE MARIE HUNTER,

6 Plaintiff,

7 vs.

8 DURR SYSTEMS, INC.,

9 Defendant.

10

11 CASE NUMBER: 2:06CV411-SRW

12

13

14 DEPOSITION: ANNE MARIE HUNTER

15

16

17 S T I P U L A T I O N S

18 IT IS STIPULATED AND AGREED by
19 and between the parties through their
20 respective counsel that the deposition
21 of ANNE MARIE HUNTER may be taken on
22 October 5, 2006, before Sallie NeSmith
23 Gunter, Certified Shorthand Reporter,

COPY

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Commissioner and Notary Public, at the
2 law offices of Sirote & Permutt, P.C.,
3 2311 Highland Avenue South, Birmingham,
4 Alabama.

5 IT IS FURTHER STIPULATED AND
6 AGREED that the signature to and the
7 reading of the deposition by the
8 witness is waived, the deposition to
9 have the same force and effect as if
10 full compliance had been had with all
11 laws and rules of court relating to the
12 taking of depositions.

13 IT IS FURTHER STIPULATED AND
14 AGREED that it shall not be necessary
15 for any objections to be made by
16 counsel to any questions except as to
17 form or leading questions, and that
18 counsel for the parties may make
19 objections and assign grounds at the
20 time of trial or at the time said
21 deposition is offered in evidence or
22 prior thereto.

23

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

APPEARANCES

1
2 Appearing for the Plaintiff:

3 HANKINS & CONKLIN, P.C.

4 By: Thomas E. Hankins, Esq.

5 6812 North Oak Trafficway

6 Suite 5

7 Gladstone, Missouri 6411-82587

8 Appearing for the Defendant:

9 SIROTE & PERMUTT, P.C.

10 By: James B. Carlson, Esq.

11 By: Kim Thomason, Esq.

12 2311 Highland Avenue South

13 Birmingham, Alabama 35205

14 Court Reporter: Sallie NeSmith Gunter

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1

I N D E X

2

3 Examination by Mr. Carlson.....7

4 Defendant's Exhibit 1

5 (E-mail from Anne Marie Hunter to
6 Leanna Schaffer).....34

7 Defendant's Exhibit 2 (Photo).....63

8 Defendant's Exhibit 3 (Photo).....63

9 Defendant's Exhibit 4 (Photo).....68

10 Defendant's Exhibit 5

11 (Document authored by Plaintiff - Items
12 for Deposition).....138

13 Defendant's Exhibit 6

14 (March 31, 2006, letter authored by
15 Dr. Howard A. Aks).....138

16 Defendant's Exhibit 7

17 (2002 Tax Return of Plaintiff).....181

18 Defendant's Exhibit 8

19 (2003 Tax Return of Plaintiff).....182

20 Defendant's Exhibit 9

21 (2004 Tax Return of Plaintiff).....185

22 Defendant's Exhibit 10

23 (Letter dated February 25, 2005, from

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1	Hermes Landscaping to Jim	
2	VanValkenburg)	186
3	Defendant's Exhibit 11	
4	(Letter dated March 14, 2005, from Jim	
5	VanValkenburg to Plaintiff)	187
6	Defendant's Exhibit 12	
7	(Undated letter from David Jewell to	
8	Jim VanVelkenburg)	188
9	Defendant's Exhibit 13	
10	(Letter dated February 16, 2005 from	
11	Plaintiff to Dave Ciuffoletti)	189
12	Defendant's Exhibit 14	
13	(Letter dated August 26, 2005, from	
14	Bruce Hartman to Plaintiff and other	
15	assorted document)	185
16	Defendant's Exhibit 15	
17	(Invoice dated February 14, 2005, from	
18	Plaintiff to Durr Industries)	213
19	Defendant's Exhibit 16	
20	(Undated portion of letter from	
21	Plaintiff)	213
22		
23		

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 up to date?

2 A. Then from 19 approximately --
3 yes, because I've only been a
4 photographer for -- I mean, I've had no
5 other jobs for quite a while so --

09:17:30AM

6 Q. How long had you been what I
7 would refer to as a freelance
8 photographer?

9 A. I've always been freelance.
10 I've never had a full-time photography
11 position. I've always been
12 self-employed as a photographer.

09:17:40AM

13 Q. Okay. If I was to ask how you
14 would characterize your kind of work or
15 characterize yourself in January of '05
16 when this incident occurred, how would
17 you characterize who you were or the
18 kind of work you did? For instance, if
19 I was driving trucks, I would say I was
20 a truck driver, or if I was an
21 underground miner, I would maybe say
22 I'm this in an underground mining
23 situation. How would you characterize

09:17:50AM

09:18:04AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 your profession and yourself at the
2 time this incident occurred?

3 A. As a commercial photographer,
4 I would characterize myself as an
5 industrial photographer; and for my
6 fine art work, I would say I'm a
7 landscape and floral photographer.

09:18:22AM

8 Q. At the time you went to Durr
9 to do this photo shoot, would you have
10 been an industrial photographer in that
11 setting?

09:18:38AM

12 A. Yes.

13 Q. Okay. And how long had you
14 been doing industrial-type photography?

15 A. Since 1996.

09:18:50AM

16 Q. Had you ever worked for Durr
17 on any of their other projects?

18 A. Many, many, many, times since
19 1997 was the first time I worked for
20 them.

09:19:06AM

21 Q. Had you worked in a paint
22 facility similar to the one you were
23 shooting in on the day of this

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Okay.

2 A. That is --

3 Q. You say that didn't come from
4 you?

5 A. No, it did not, Scout's honor. 09:34:48AM

6 Q. But you agree with the part
7 that you're a self-employed freelance
8 photographer?

9 A. That part, yes.

10 Q. Do you have contracts with
11 other industries for whom you have shot
12 pictures?

13 A. The one I know for sure that
14 is on file right now is with
15 Harley-Davidson. I've worked with them
16 since 1996. 09:35:10AM

17 Q. Okay. You worked in the
18 capacity of an independent contractor
19 with Harley?

20 A. Yes. 09:35:22AM

21 Q. And would that be the same for
22 Durr?

23 A. Yes.

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. In the freelance shooting that
2 you did for Harley, it's my
3 understanding, and you correct me if
4 I'm wrong, that you shot that facility
5 from the ground up --

09:35:42AM

6 A. Correct.

7 Q. -- as it was being built?

8 A. Yes.

9 Q. Okay. So by the time you get
10 to Durr, you're pretty familiar with
11 industrial settings?

09:35:50AM

12 A. Correct.

13 Q. And in particular in the
14 Harley case, that project was not
15 completed during much of the
16 photography that you shot?

09:36:02AM

17 A. I'm sorry, what?

18 Q. Much of that facility was in
19 progress, that is, it was being built
20 and not completed during your shoots?

09:36:10AM

21 A. It -- I shot for that facility
22 from the groundbreaking through
23 production, through -- I mean, I'm

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 still shooting for them -- I still was
2 shooting for them.

3 Q. Are you still shooting for
4 them now?

5 A. No, I haven't shot for them
6 since this accident. I consider myself
7 part of the Harley family, but no, I
8 have had no shoots for them since the
9 accident.

09:36:26AM

10 Q. Do you have your own hog?

09:36:34AM

11 A. I did.

12 Q. But you sold it?

13 A. I did.

14 Q. That's the one you had the
15 accident on?

09:36:40AM

16 A. I didn't have an accident on
17 my Harley.

18 Q. Okay. Let me get back to the
19 Harley setting. It's true that you
20 were shooting pictures while that whole
21 facility was under construction?

09:36:48AM

22 A. Yes.

23 Q. Until it was completed?

SOUTHERN COURT REPORTING

1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226

(205) 978-2310 southerncourtreporting@charter.net

1 A. Yes.

2 Q. So you were familiar with
3 being around industrial settings that,
4 for instance, were incomplete?

5 A. Yes.

09:37:00AM

6 (Off-the-record discussion.)

7 Q. (BY MR. CARLSON) There's
8 another reference in your medicals, and
9 I think it's Diveley's medicals, and
10 you can say it's true or not, but I'm
11 just poking around here. It says --
12 the medical records go on to state that
13 "This work requires working on various
14 levels, climbing and holding photo
15 equipment."

09:37:54AM

16 A. Yes.

09:38:06AM

Q. So that would be true --

18 A. Yes.

Q. -- of your industrial shoots?

20 A. Yes.

09:38:10 AM

21 Q. Would that accurately describe
22 the kind of work that you were doing at
23 Durr in January of 2005?

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 A. Yes.

2 Q. So you were familiar with the
3 way it was set up?

4 A. Yes.

5 Q. And so does Christian open the
6 door and you walk in? 09:43:12AM

7 A. Yes.

8 Q. And do you take your bag and
9 your tripod and your camera with you?

10 A. Yes. 09:43:20AM

11 Q. And what are you wearing for
12 footwear on this occasion?

13 A. Steel-toed boots that -- I
14 have lace-up steel-toed boots.

15 Q. Are they smooth or cleated
16 bottoms? 09:43:30AM

17 A. Cleated.

18 Q. And then are you wearing a
19 jacket or is it just --

20 A. I had on a sweater and jeans. 09:43:36AM

21 Q. All right. So you were in
22 there --

23 A. A lot of times you -- a lot of

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 accident yet?

2 Q. No, I'm just asking you what
3 you did first.

4 A. The first thing I did was to
5 walk in and scope things out.

09:44:52AM

6 Q. Let me stop there, and we'll
7 take it in small bites. When you go in
8 to scope it out, is anything moving?

9 A. No.

10 Q. Okay. But you've got some car
11 bodies in there?

09:45:00AM

12 A. Yes.

13 Q. And then you said something
14 about watching the robots?

15 A. Right.

09:45:06AM

16 Q. Are the robots moving?

17 A. No.

18 Q. So what is it that you're
19 trying to do, with nothing moving, in
20 order to determine what kind of shots
21 you want to make?

09:45:16AM

22 A. I'm seeing if I want my --
23 what my lens is that I need, can I

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 handle it or do I need to just keep it
2 on the tripod, just a lot of technical
3 things.

4 Q. No one from Durr is telling
5 you how to do those things?

09:45:34AM

6 A. No, no one is telling me.

7 Q. You're the professional in
8 this setting?

9 A. Right.

10 Q. All right. Before you
11 actually start taking pictures, does
12 anything move?

09:45:38AM

13 A. As soon as -- yeah. As soon
14 as -- I'm waiting for the bodies to
15 start moving, and I don't start taking
16 pictures until the bodies start moving.
17 Then a body moves forward, then I start
18 to move forward, and I follow its line,
19 get as close as I can without putting
20 myself in danger of getting sprayed
21 with paint so --

09:45:54AM

22 Q. Let me stop you there. Had
23 you had a discussion with someone about

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Okay.

2 A. Also because I use a really
3 fast speed of film and my shutter speed
4 doesn't have to be that long, and
5 because I've done this for so long, and
6 this is what I do, and I make good
7 pictures like this, really good, not
8 extreme photography but --

09:51:18AM

9 Q. All right. Let's work off of
10 Defendant's Exhibit 2. Did you shoot
11 more than one direction in the robot
12 paint booth on this occasion where the
13 accident occurred?

09:51:30AM

14 A. Yes.

15 Q. Did you get at one end and set
16 up and shoot --

09:51:48AM

17 A. No, I --

18 Q. -- and then go to the other,
19 how did it work?

20 A. When I first came in, I
21 stopped right there, and I turned
22 around and got these feathers and some
23 shots going back down the line from

09:51:56AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 behind me. And then I waited for the
2 body in front of me to start moving and
3 then there was another body in front
4 for when the robot started to paint,
5 and then I started to walk forward.

09:52:14AM

6 Q. Okay. And is that when your
7 accident happened?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

09:52:20AM

11 Q. Okay.

12 A. Sorry.

13 Q. Can you see in Defendant's
14 Exhibit 2 where you started before you
15 followed the car?

09:52:28AM

16 A. I'm pretty sure that it's
17 right -- like the exit door is right
18 here (indicating) after the emu
19 feathers.

20 Q. And that's where you came in?

09:52:40AM

21 A. Uh-huh, enters and exits,
22 right.

23 MR. CARLSON: Have you got a

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 couple of these photographs?

2 MR. HANKINS: That's the only
3 one I brought. Do you want to make
4 some copies so we can mark them?

5 MR. CARLSON: Yeah, let's do 09:52:54AM
6 that. Let me see if we've got one
7 here. We may well have one here, Tom.
Let's use it to save us a little time.

9 MR. HANKINS: Okay.

10 (Off-the-record discussion.) 09:54:24AM

11 Q. (BY MR. CARLSON) Take a look
12 at this assortment of pictures, Ms.
13 Hunter, and see if we can find one that
14 works. There's a series of them there
15 that look similar. 09:54:40AM

16 A. Right.

17 Q. Can you commit to any one of
18 those photographs?

19 A. Well, do you mean if I took
20 them? 09:54:50AM

21 Q. No, that it fairly and
22 accurately depicts the area where your
23 injury occurred?

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 A. Yeah (indicating).

2 Q. Let's go with what works.

3 A. Okay.

4 Q. All right. Can we work with

5 the one you just pointed to?

09:55:00AM

09:55:04AM

10 Q. (BY MR. CARLSON) It would be
11 the bottom photograph on Defendant's
12 Exhibit 4, correct?

13 A. Yes.

14 Q. All right. Why don't we do
15 this? You came in on one side of the
16 robotic paint booth, and then prior to
17 following a car through the paint
18 booth, you get prepared to take those
19 shots, correct?

09:55:12AM

20 A. Correct.

09:55:26AM

21 Q. Do you set your tripod up in a
22 stationary location to take the first
23 shot?

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 A. Usually what I do --

2 Q. What I need to know is what
3 you did on this occasion.

4 A. Okay. What I did, which is
5 what I always do, is I put the two back
6 legs on these (indicating). 09:55:40AM

7 Q. Okay.

8 A. And then I -- the front leg
9 has almost a big enough rubber thing
10 not to go through. Sometimes it will
11 go through the grate a little bit,
12 sometimes it doesn't. But if it
13 doesn't, it gets a little bit stuck,
14 that's okay, I can just pull it out and
15 keep going. 09:55:52AM

16 Q. Why don't you, if you would,
17 just use this black felt tip and draw
18 your tripod where you started.

19 A. I don't know. I don't know.

20 Q. Did you start in the area that
21 we see in that bottom photograph on
22 Defendant's Exhibit 4? 09:56:32AM

23 A. Okay. I think what I did was

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. You take --

2 A. -- in with me to show me the
3 emu feathers. He came in, but he
4 didn't come in all the way, and he
5 said, Behind you, we brush the bodies
6 off with emu feathers. And I go, Well,
7 I'll take some pictures of those before
8 the bodies start coming up and then --

09:58:46AM

9 Q. Let me stop you there so we
10 can get this maybe one time.

09:59:02AM

11 A. All right.

12 Q. Before you do anything that is
13 related to your accident, you step
14 back, as we see in Defendant's Exhibit
15 4, the bottom picture --

09:59:08AM

16 A. Uh-huh.

17 Q. -- and shoot the emu feathers?

18 A. Right.

19 Q. And Christian came in and he
20 showed you those, and then you decided
21 to take some pictures of the emu
22 feathers?

09:59:14AM

23 A. Right.

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. All right. Then you said at
2 that point there are cars behind you?

3 A. Right.

4 Q. And is that as you're looking
5 at these emu feathers? 09:59:30AM

6 A. Yes.

7 Q. Okay.

8 A. But the car was not moving
9 yet.

10 Q. Good. 09:59:34AM

11 A. I've been hit by a car before.
12 I've been hit by a robot before.

13 Q. All right. Tell me what you
14 do next.

15 A. Christian says the bodies are
16 going to be coming, I need to go
17 outside. I said that I will go
18 forward, and after I did emu feathers,
19 he went out, and I walked forward to
20 start the body, and then a body came
21 up -- 09:59:44AM

22 Q. Wait, wait, wait. You walked
23 forward, you walked forward and did

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 what?

2 A. Nothing. I moved away, a body
3 was coming up.

4 Q. Okay.

5 A. Christian said --

10:00:06AM

6 Q. As you look at Defendant's
7 Exhibit 4 in the bottom --

8 A. Yes.

9 Q. -- would that car that we see
10 be coming towards you?

10:00:12AM

11 A. No, that's going away from me.

12 Q. It's one from behind you
13 that's coming up?

14 A. Correct.

15 Q. Got you.

10:00:16AM

16 A. So Christian said that they're
17 coming, so I stepped aside to let it
18 go. And then he said, Are you ready?
19 He left to go operate the computer
20 outside. I got back on here, started
21 walking. The first body was here
22 getting ready to get painted, and I
23 went up to there to set up.

10:00:26AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Let me just -- I know this is
2 kind of tedious, but for me to
3 understand what you're talking about
4 and so the record makes sense, I just
5 want to go back over it a little bit
6 and see if I've got the sequence
7 correct, okay?

10:00:44AM

8 A. Okay.

9 Q. You and Christian go into the
10 robotic paint booth, and he shows you
11 where the emu feathers are?

10:00:50AM

12 A. Uh-huh. He just wanted to
13 point out that was something new
14 that -- particular to this plant that
15 no one else had done before.

10:01:02AM

16 Q. All right. And then because
17 you learned it was new, did you decide
18 maybe I ought to take a picture of
19 those?

20 A. Yes.

10:01:10AM

21 Q. And you take that picture as
22 you're facing in the bottom of
23 Defendant's Exhibit 4, and then he

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 says, I'm going to move some cars, and
2 you step to the side?

3 A. He didn't have the control to
4 move the cars. The cars -- he didn't
5 control the cars moving. He probably
6 controls the robots painting the cars.
7 The cars were coming from down line
8 somewhere, they were going through
9 production.

10 Q. Does he tell you a car is
11 coming? 10:01:32AM

12 A. Yes.

13 Q. Okay. So you get off to the
14 side?

15 A. Right. 10:01:36AM

16 Q. And does that car pass you?

17 A. Yes.

18 Q. And is Christian outside the
19 robotic paint booth?

20 A. Yes. 10:01:44AM

21 Q. In the control panel area?

22 A. Yes.

23 Q. All right. So this car that

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 was coming behind you is now in front
2 of you?

3 A. Correct.

4 Q. And does that car stop?

5 A. Yeah. They always stop for a
6 minute, then they start and then they
7 can stop, they start. They're not --
8 sometimes they flow smoothly, sometimes
9 they don't. But yes, that car stopped.

10:01:52AM

10 Q. Do you know why it stopped?

10:02:02AM

11 A. No. There's numerous reasons
12 why they stop.

13 Q. But you don't know why?

14 A. Uh-uh.

15 Q. Okay. After that car
16 stopped --

10:02:14AM

17 A. It's pretty typical, though.

18 Q. What happens after that car
19 stops?

20 A. Then I get back on here, start
21 walking up here (indicating) to get
22 ready to photograph these robots
23 painting some bodies.

10:02:20AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. And that's the robots that you
2 see in the bottom photograph of
3 Defendant's Exhibit 4?

4 A. Yes.

5 Q. All right. Now, before you
6 began doing your shoot, did you set
7 your tripod up?

10:02:32AM

8 A. Yes.

9 Q. Can you show me on that
10 Defendant's Exhibit 4, just straddle
11 that thing and put your tripod in
12 there, go ahead and draw it in there.

10:02:46AM

13 A. Yes.

14 Q. Go ahead and draw some legs to
15 it so I know I'm not just looking at
16 dots.

10:02:54AM

17 A. (Witness complies.)

18 Q. All right. And your camera is
19 mounted on the tripod?

20 A. Yes.

10:03:04AM

21 Q. And what happens next?

22 A. Then the bodies start moving
23 and the robots start painting, and I

SOUTHERN COURT REPORTING

1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226

(205) 978-2310 southerncourtreporting@charter.net

1 get quite a few shots of that first
2 body. Then I start following it, I
3 lift up my tripod, start walking
4 forward to get as close as I can, get
5 some really close shots, set it down
6 again maybe a little bit further. My
7 foot slips, I look down, I think I'm
8 going to get killed.

10:03:24AM

9 Q. Okay. Let me stop and rewind
10 the tape. You taken some shots from
11 where you have drawn the tripod --

10:03:36AM

12 A. Uh-huh.

13 Q. -- on Defendant's Exhibit 4?

14 A. Uh-huh.

15 MR. HANKINS: Yes?

10:03:44AM

16 Q. Yes?

17 A. Yes.

18 Q. And are the robots at this
19 station painting the inside of the car
20 or the outside?

10:03:52AM

21 A. It's a top coat.

22 Q. It's a top coat?

23 A. Uh-huh, but it goes inside. I

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Right. So you shoot some
2 shots, but the car is gradually moving
3 away from you?

4 A. Yes.

5 Q. All right. Then you pick up 10:04:44AM
6 your tripod and you start walking
7 towards the car?

8 A. Yes.

9 Q. And do you ever set your 10:04:50AM
10 tripod down again?

11 A. Yes.

12 Q. And --

13 A. That's what saved my life.

14 Q. Well, you set the tripod down, 10:05:00AM
15 and you take some more shots?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. And how many shots do you take 10:05:04AM
20 at that location?

21 A. Well, when I set my tripod
22 down when my foot slipped, I hadn't
23 take one shot yet. When I picked it up

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 at the time -- I might have moved two
2 or three times, but the time that I
3 picked it up and my foot slipped, I put
4 it down. As I was putting it down, my
5 foot slipped and I looked down, and I
6 was headed down. And if it wasn't for
7 my tripod hooked up over here, I would
8 have fallen through that hole.

10:05:30AM

9 Q. Okay. Do you think you set up
10 your tripod one, two, or three times
11 before this accident occurred?

10:05:42AM

12 A. I don't know. Maybe a couple,
13 maybe three.

14 Q. Okay. And in each of those
15 settings, with the exception of the
16 last, did you take pictures from the
17 tripod?

10:05:54AM

18 A. Yes.

19 Q. And on the third time --

20 A. Or maybe the fourth.

10:06:02AM

21 Q. Okay. Anyway, on the last
22 one --

23 A. It was at the most that

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 probably.

2 Q. On the last one, do you get
3 your tripod established and firmly set?

4 A. No. I am setting it down
5 trying to get it locked into the sides
6 and my foot slips. And as my foot
7 slips, my tripod locks down onto the
8 sides, and that is what I used to pull
9 myself up so I wouldn't go through that
10 hole.

10:06:14AM

11 Q. Okay. At the time that you
12 set your tripod up in front of that
13 hole, how far was the tripod from the
14 hole?

15 A. I don't think we can say that
16 I set it up. I was in the process of
17 setting it up.

10:06:42AM

18 Q. And where you were setting it
19 up?

20 A. And the hole is here and the
21 tripod would have, once again, gone
22 here on those rails for stabilizing it
23 (indicating).

10:06:48AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. But what I'm asking is this:
2 As you were trying to set up the tripod
3 in front of this hole, about how far
4 was your tripod from the hole?

5 A. It straddled it probably.

10:07:06AM

6 Q. Straddled the hole?

7 A. Probably, yeah, because I
8 didn't see it.

9 Q. Okay.

10 A. So I'm walking with all my
11 gear and getting ready, okay, I want
12 this shot, set my tripod down, take a
13 step, my tripod locks down or sets down
14 on these (indicating), my foot slips.

10:07:14AM

15 I look down, and there's death,
16 seriously.

10:07:28AM

17 Q. What did your foot slip on?

18 A. It slipped into the hole. I'm
19 walking on this (indicating), and my
20 foot slips into the hole.

10:07:42AM

21 Q. Okay. While you're setting up
22 your tripod?

23 A. While I'm carrying my tripod,

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 please?

2 Q. Sure. I'm not trying to trick
3 you but it's --

4 A. I normally walk here. I don't
5 walk over here (indicating).

10:08:36AM

6 Q. Right. And when you say
7 you're walking here, you're walking on
8 the grates where you've shown the
9 tripod straddling in Defendant's
10 Exhibit 4?

10:08:46AM

11 A. Right.

12 Q. Okay. Here's all I'm asking:
13 Would it be fair to say on either side
14 of that area that you were walking on,
15 it dropped off at least a foot?

10:08:54AM

16 A. Yes.

17 Q. On both sides?

18 A. Yes.

19 Q. Okay. All I'm trying to
20 establish is it's not a level floor,
21 you're walking up on kind of a catwalk?

10:09:00AM

22 A. I think catwalks are defined
23 much higher. I wouldn't say that.

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 I've been on catwalks. That's just a
2 floor for the bodies to pass on. Yeah,
3 I mean, if you call a foot drop-off a
4 catwalk, but I wouldn't call it that.

5 Q. I understand that, but I'm
6 just trying to say it does elevate --
7 it's elevated in that area, a foot on
8 both sides?

9 A. Okay. Yes.

10 Q. Okay. Now, when you're
11 setting down your tripod that last
12 time, it sounds to me, and you correct
13 me if I'm wrong, that the legs of the
14 tripod are overreaching and going
15 outside the confines of what I call the
16 catwalk?

17 A. No.

18 Q. Or were you able to get the
19 legs of the tripod on the outer edges
20 of that catwalk?

21 A. They were right here
22 (indicating).

23 Q. Just like you've drawn it?

10:09:16AM

10:09:24AM

10:09:42AM

10:09:52AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 A. Uh-huh .
2 Q. Only further down?
3 A. Uh-huh .
4 Q. Yes?
5 A. Yes . 10:10:00AM
6 Q. Okay. And just so I
7 understand, when you stepped in the
8 hole, you were in the process of
9 putting your tripod in place --
10 A. Yes . 10:10:10AM
11 Q. -- to take these pictures?
12 A. Yes .
13 Q. And when you put your foot in
14 the hole, were the legs of the tripod
15 in contact with the floor? 10:10:16AM
16 A. It probably happened
17 simultaneously.
18 Q. Simultaneously. Now, at that
19 point in time, how far is the car that
20 you're photographing in front of you,
21 how far away is it? 10:10:26AM
22 A. Ten feet maybe.
23 Q. Okay. And that's from your

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 tripod to the rear end of the car?

2 A. Yeah.

3 Q. Okay. Was there anything
4 obstructing your view of the hole in
5 the floor at the time you were setting
6 this tripod up and you stepped in the
7 hole?

8 A. No. I wasn't looking for a
9 hole in the floor, so I wouldn't have
10 seen it.

11 Q. Okay. But what I'm asking,
12 there wasn't anything between you and
13 that car that would have kept you from
14 seeing that hole, is there?

15 A. At the point of -- yes, my
16 gear probably.

17 Q. What gear?

18 A. My camera bag, my tripod, my
19 camera, my film bag were all around me,
20 and so I would have expected the floor
21 to be there.

22 Q. I'm not asking what you
23 expect. I'm asking you, was there

10:10:46AM

10:10:56AM

10:11:02AM

10:11:16AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 anything blocking your visual view of
2 the floor area where that grate was
3 missing?

4 A. I wasn't looking at the floor.

5 Q. All I'm asking you, was there
6 anything blocking your view of that
7 hole at that time? 10:11:42AM

8 A. My camera and tripod take up
9 this much space in front of me
10 (indicating), and I needed -- I was
11 concentrating on the robots painting
12 and the shot I wanted to get. So in
13 essence, yes, the answer is yes, I was
14 looking at something other than the
15 floor. 10:11:56AM

16 Q. Well, I understand you were
17 looking at something other than the
18 floor. Was there anything to prevent
19 you from looking at the floor where
20 that hole was? 10:12:08AM

21 A. Yes. If I had looked down, I
22 would have not seen. I think my camera
23 and bag and everything would have 10:12:16AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 obstructed me to see the floor maybe.

2 Q. But you're not sure?

3 A. I don't know for sure.

4 Q. Because you were looking at
5 the robots as you were setting up the
6 tripod? 10:12:30AM

7 A. Yes.

8 Q. All right. At the time you
9 were putting your tripod down, were you
10 looking through the lens of your camera
11 at the same time? 10:12:40AM

12 A. No.

13 Q. Really what you were doing is
14 you were setting the tripod up to
15 stabilize it -- 10:12:50AM

16 A. Yes, but what I was --

17 Q. -- while looking at the
18 robots?

19 A. But I was looking ahead,
20 forward. 10:12:56AM

21 Q. Okay. But other than your
22 tripod, your equipment, there was
23 nothing between you and the car that

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 would keep you from seeing the hole in
2 the floor, was there?

3 A. No.

4 Q. Okay. In looking at
5 Defendant's Exhibit 4, can you see the
6 grate that you say was missing on this
7 occasion? And if you need to look at
8 those other pictures, feel free to do
9 that.

10:13:22AM

10 A. No. When Christian picked it
11 up to put it back, I believe it was
12 just right over here in the corner.

10:13:50AM

13 Q. On the left-hand side?

14 A. Uh-huh.

15 Q. Yes?

10:13:58AM

16 A. Yes.

17 Q. Okay. And the car that you
18 were photographing or following at the
19 time of your accident, was it the same
20 color as the car we see in Defendant's
21 Exhibit 4?

10:14:10AM

22 A. No, because they switched
23 paint colors two or three times while I

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Okay.

2 A. Because it wasn't -- I mean,
3 it wasn't a long time I was in there
4 before that happened.

5 Q. Uh-huh. And how many grates
6 were gone in the floor, as you
7 remember?

8 A. Two.

9 Q. At the time you actually
10 stepped your foot in that hole in the
11 floor, are you looking at the robots?
10:15:24AM

12 A. Yes.

13 Q. Was there anything in
14 particular that you were looking for
15 when you did that?
10:15:50AM

16 A. I look for a lot of things
17 when I'm shooting. I look for light, I
18 look for color, shape. I also watch to
19 make sure the robots are not doing
20 something erratic, because they can in
21 a startup of a plant. They always can.
22 I mean, that could be even during when
23 the plant could be going for cars and
10:16:02AM

10:16:22AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 shoot, I've never worked like I'm under
2 so much pressure, because I just can't
3 make good pictures like that. So I'm
4 calm really on the inside, I'm just
5 doing my work very efficiently, just
6 like almost like a ballet. You know,
7 it's almost like a -- I've danced a lot
8 in my life, and that's kind of how I've
9 approached my photography is everything
10 has its time and, you know, I try to do
11 it gracefully and work efficiently.

10:17:42AM

12 Q. Of the photographs that your
13 attorney has produced to me, are those
14 all of the photographs that you took on
15 this occasion?

10:17:50AM

10:18:08AM

16 MR. HANKINS: I don't think
17 she knows what I've produced. I gave
18 him 145 photos, and you had --

19 A. No, that is not all of the
20 pictures I took.

10:18:22AM

21 MR. HANKINS: You had -- what
22 do you call those cards that have like
23 30?

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 THE WITNESS: Index.

2 MR. HANKINS: Index cards.

3 Q. (BY MR. CARLSON) I've got
4 about 145 pictures. Do you think there
5 are more of this shoot that you did at
6 Durr? 10:18:30AM

7 A. Yes. There are more of the --
8 I cannot remember the name of it, but
9 it's this new process they have where
10 the bodies go in a 360 for one of their
11 coats, and maybe there are a few of
12 those that I didn't give you, which I
13 can provide. 10:18:46AM

14 Q. Did you happen to find any
15 photograph that showed the missing
16 grate that you actually photographed? 10:18:58AM

17 A. The only -- there isn't that.
18 The only -- I did not know the grate
19 was missing or I probably would have
20 photographed it. The only thing I
21 photographed was Christian putting back
22 the grate while I was laying on the
23 floor. 10:19:12AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Okay. And the only one you
2 took after the accident is the one with
3 Christian putting the grate back?

4 A. Uh-huh, correct.

5 Q. Yes. All right. When you
6 fell, you said your tripod saved you.
7 Tell me how that worked.

8 A. Well, I held it really hard
9 and used it like to pull me out,
10 because there was really nothing to
11 stop me from falling into that hole,
12 it's pretty big. It was locked down
13 right here on these white things, and
14 so I was able to pull myself out, and
15 then I had no control of myself at that
16 point. I mean, I was just like trying
17 to save my life. So I fell over and
18 fell really hard on this (indicating).

19 Q. On the right-hand side?

20 A. Uh-huh, on this is really --
21 on one of these is what I think I fell
22 on (indicating). And right here -- can
23 I show you something?

10:20:26AM

10:20:44AM

10:20:58AM

10:21:12AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 Q. Sure, you can draw all over
2 your attorney's pictures.

3 A. Okay. This is where I fell
4 like into an area here, and then my
5 camera landed right here and stayed
6 (indicating). 10:21:28AM

7 Q. On a step?

8 A. My hand was there, like my
9 hand was extended, and my camera landed
10 then on top of my hand right there. So
11 my hand got smashed between my camera
12 and this thing right here (indicating).

13 Q. While you're drawing on that
14 photograph that we've marked
15 Defendant's Exhibit 2, you've made some
16 marks on the right-hand side of what
17 I've called the catwalk. 10:21:50AM

18 A. Uh-huh.

19 Q. I understand we've got a
20 dispute on what a catwalk is, but at
21 least we're talking the same language.
22 Is it your testimony that you fell to
23 the right-hand side where you've made 10:21:58AM

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 these black marks?

2 A. Yes.

3 Q. And it is your testimony that
4 your camera landed on the step that we
5 see in that photograph?

10:22:10AM

6 A. That's not -- yes, it did.

7 But it landed on my hand, while my hand
8 was on this step (indicating).

9 Q. On the step. Okay. Do you --

10 A. And the rest of my body was
11 like laying right here (indicating).

10:22:20AM

12 Q. Do you actually fall down in
13 the hole?

14 A. No.

15 Q. Okay. So basically, you hit
16 the side rail to the hole?

10:22:26AM

17 A. Uh-huh.

18 Q. Yes?

19 A. Yes.

20 Q. And your camera lands on your
21 wrist?

10:22:32AM

22 A. Uh-huh.

23 Q. Yes?

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 A. No.

2 Q. We've talked about all of it?

3 A. Yes.

4 Q. Okay. And you're making a
5 claim for lost wages, lost income, the
6 pain, the medical bills. Anything else
7 that you're making claim for in this
8 case?

12:12:28PM

9 A. The change in my profession.

10 Q. Anything else that you can
11 think of?

12:12:46PM

12 A. No.

13 MR. CARLSON: All right.

14 Thank you very much for giving me your
15 time.

12:12:54PM

16 THE WITNESS: Thanks.

17 MR. CARLSON: And that's the
18 last question I have.

19 MR. HANKINS: We'll read and
20 sign.

12:13:02PM

21 THUS CONCLUDED THE DEPOSITION OF

22 ANNE MARIE HUNTER

23

SOUTHERN COURT REPORTING
1600 WOODMERE DRIVE, SUITE A, BIRMINGHAM, ALABAMA 35226
(205) 978-2310 southerncourtreporting@charter.net

1 C E R T I F I C A T E

2 STATE OF ALABAMA)

3 JEFFERSON COUNTY)

4 I hereby certify that the above
5 and foregoing proceeding was taken down
6 by me by stenographic means, and that
7 the questions and answers therein were
8 produced in transcript form by computer
9 aid under my supervision, and that the
10 foregoing represents, to the best of my
11 ability, a true and correct transcript
12 of the proceedings occurring on said
13 date at said time.

14 I further certify that I am
15 neither of counsel nor of kin to the
16 parties to the action; nor am I in
17 anywise interested in the result of
18 said cause.

19 _____
20 *Sallie Nesmith Gunter*
21 _____

21 SALLIE NESMITH GUNTER

22 CERTIFIED SHORTHAND REPORTER

23

EXHIBIT “B”

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ANNE MARIE HUNTER,

)

Plaintiff,

)

v.

CASE NO.: 2:06-cv-0411-SRW

DURR SYSTEMS, INC.,

)

Defendant.

)

AFFIDAVIT OF SCOTT MATTHEW WAGNER

STATE OF MICHIGAN)

COUNTY OF WAYNE)

Scott Matthew Wagner gives this testimony after being duly sworn:

1. My name is Scott Matthew Wagner. I am over the age of nineteen (19) years, of sound mind, and I give this testimony based on my personal knowledge.
2. I am employed as a Corporate Safety Officer at Durr Systems, Inc. I am one of the custodians of certain records relating to Anne Marie Hunter's fall at the Hyundai facility in Montgomery, Alabama, on or about January 26, 2005. One of these records is attached to my Affidavit as Attachment "1", which is a true and correct copy of an engineering drawing of the grate that was missing on the date of Ms. Hunter's fall.

3. Durr Systems, Inc. maintains this document in the usual and ordinary course of its business, and it relies upon this document and others like it in the usual and ordinary course of its business.

4. The grate that was missing on the date of Ms. Hunter's fall was five feet (5') long (1,524 mm), two feet one and nine-sixteenths inches (2' 1-9/16") wide (650 mm), and one and a quarter inches (1 1/4") high (30 mm).

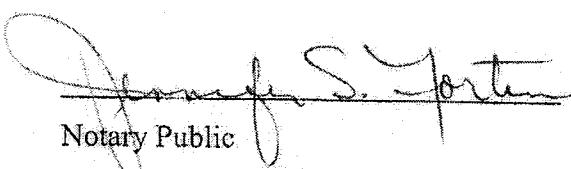
5. Attachments "2", "3", and "4" to my affidavit are true and correct copies of photographs that fairly and accurately depict the paint booth in which Anne Marie Hunter fell.

Further Affiant sayeth not.


Affiant

Subscribed and sworn to before me this

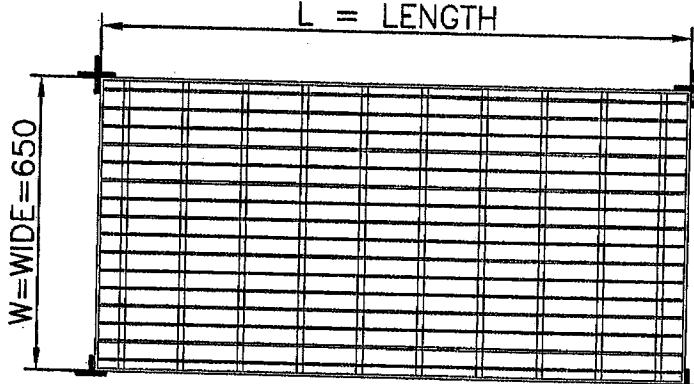
1st day of March, 2007.


Notary Public

My Commission Expires: 11-17-2007

JENNIFER S. FORTIN
Notary Public, Wayne County, MI
My Commission Expires Nov. 17, 2007

ATTACHMENT “1”



1 1/4" x 3/16"
Type 30W4
Smooth Steel Bar
Grating, Banded,
Painted Black

GRATINGS :

WIDTH: 650 [mm] ; 2'-1 9/16"
HEIGHT: 30 [mm] ; 1-1/4"
LENGTH: 1524 [mm] ; 5'-0"

Conveyor No	PC0682	65 pcs.
-------------	--------	---------

Conveyor No	PC1062	35 pcs.
Conveyor No	PC1096	35 pcs.

			Notice:
Conveyor No	PC1064	24 pcs.	The lengths are counted without length of gratings in heated flash
Conveyor No	PC1098	24 pcs.	

LENGTH TOLLERANCE: -1 [mm] ; -3/64"

ATTACHMENT “2”



DEFENDANT'S
EXHIBIT

2

00-00000-00000-00000

AM 2007
Hyland
1/05

ATTACHMENT “3”



DEFENDANT'S
EXHIBIT

ATTACHMENT “4”



DEFENDANT'S
EXHIBIT

4

ATTACHMENT “5”

